

Message Text

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USMISSION USBERLIN IMMEDIATE
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C O N F I D E N T I A L SECTION 01 OF 03 BONN 10800

USEEC

DEPARTMENT FOR EUR/CE

E.O. 11652: GDS
TAGS: PGOV EEC FR GE GW UR UK US WB
SUBJECT: EC/SOVIET FISHERIES NEGOTIATIONS: BERLIN AND
THE TERRITORIAL CLAUSE

REFS: (A) BONN 10763 (EXDIS); (B) BONN 10485 AND
PREVIOUS

BEGIN SUMMARY. BONN GROUP DISCUSSION OF HOW TO ASSURE THE
INCLUSION OF BERLIN IN THE EC/SOVIET FISHERIES
AGREEMENT HAS PRODUCED FURTHER VARIANTS ON A POSSIBLE
TERRITORIAL CLAUSE. THE FRG CONTINUES TO INSIST THAT
THE SOVIETS MUST BE MADE TO FOCUS ON THIS
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CLAUSE BEFORE AGREEMENT IS REACHED ON ALL "TECHNICAL"
ASPECTS OF THE TREATY, AND A SUITABLE FALLBACK
TERRITORIAL CLAUSE COULD THUS BE NEEDED IN THE NEAR
FUTURE. ACTION REQUESTED: VIEWS OF USBER AND THE
DEPARTMENT ON THE VARIOUS FORMULATIONS DISCUSSED
BELOW. END SUMMARY.

1. DISCUSSION OF THE EC/SOVIET FISHERIES NEGOTIATIONS
IN THE JUNE 28 BONN GROUP MEETING FEATURED A FURTHER
PROLIFERATION OF POSSIBLE FORMULATIONS FOR ASSURING THAT
THE TREATY WOULD APPLY ALSO TO BERLIN. TO FACILITATE
DISCUSSION, WE REPEAT HERE THE VARIOUS FORMULATIONS WHICH
ARE NOW BEFORE THE BONN GROUP:

A. ARTICLE 10 IN THE PRESENT DRAFT EC TREATY.

"THE PRESENT AGREEMENT SHALL APPLY TO THE
TERRITORIES WITHIN WHICH THE TREATY ESTABLISHING
THE EUROPEAN ECONOMIC COMMUNITY IS APPLIED AND
UNDER THE CONDITIONS LAID DOWN IN THAT TREATY,
ON THE ONE HAND, AND TO THE TERRITORY OF THE
UNION OF THE SOVIET SOCIALIST REPUBLICS, ON THE
OTHER HAND."

B. UK REDRAFT OF MAY 16.

"THE PARTIES TO THIS AGREEMENT ARE, ON THE ONE
HAND, THE EEC, WHICH COMPRISES THE TERRITORIES
TO WHICH THE TREATY ESTABLISHING THE COMMUNITY
IS APPLIED UNDER THE CONDITIONS LAID DOWN IN THAT
TREATY, AND ON THE OTHER HAND, THE USSR."

C. FRENCH COUNTER PROPOSAL OF JUNE 3.

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"THE PARTIES TO THIS AGREEMENT ARE, ON THE ONE
HAND, THE EEC, THE COMPETENCES OF WHICH
ARE EXERCISED WITHIN THE TERRITORIES TO WHICH THE
TREATY ESTABLISHING THE COMMUNITY IS APPLIED AND
UNDER THE CONDITIONS LAID DOWN IN THAT TREATY, AND,
ON THE OTHER HAND, THE USSR."

D. POSSIBLE SOVIET PROPOSAL.

SAME AS (A) ABOVE, WITHOUT THE PHRASE "AND UNDER
THE CONDITIONS LAID DOWN IN THAT TREATY."

E. UK SUGGESTION OF JUNE 20.

SAME AS FORMULA (A) ABOVE, BUT AFTER THE
SECOND USE OF THE WORD "TREATY" ADD THE WORDS
"AND OTHER APPLICABLE AGREEMENTS" -- IN ORDER TO
MAKE AN OBLIQUE REFERENCE TO THE QUADRIPARTITE
AGREEMENT.

F. FRG PROPOSAL OF JUNE 28.

NOTE BY OCT: DISSIMINATION COORDINATED WITH SS/O C. SMITH.

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"THE PRESENT AGREEMENT SHALL APPLY ON THE ONE HAND
TO THE EEC, WHICH COMPRISES THE TERRITORIES TO
WHICH THE TREATY ESTABLISHING THE COMMUNITY IS
APPLIED UNDER THE CONDITIONS LAID DOWN IN THAT
TREATY, AND ON THE OTHER HAND TO THE USSR."

G. COMBINED FRG/FRENCH FORMULATION -- JUNE 28.

"THE PRESENT AGREEMENT SHALL APPLY ON THE ONE HAND
TO THE EEC, THE COMPETENCES OF WHICH ARE
EXERCISED WITHIN THE TERRITORIES TO WHICH THE
TREATY ESTABLISHING THE COMMUNITY IS APPLIED UNDER
THE CONDITIONS LAID DOWN IN THAT TREATY, AND ON
THE OTHER HAND TO THE USSR."

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2. IN OPENING THE DISCUSSION, THE UK REP AGAIN ASKED WHETHER THERE WAS A GERMAN REACTION AS YET TO THE UK PROPOSAL OF MAY 16 (FORMULATION (B) ABOVE). HENZE (FRG) RESPONDED THAT THE FRG HAD NOW DEVELOPED A FORMULATION OF ITS OWN AND READ OUT THE TEXT IN (F) ABOVE.

3. FRENCH REP (GAUSSOT) IMMEDIATELY STATED CATEGORICALLY THAT THAT FORMULATION WOULD BE UNACCEPTABLE TO PARIS FOR THE SAME REASONS THAT THE MAY 16 BRITISH FORMULATION WAS UNACCEPTABLE: THE WORD "COMPRISES" IMPLIES THAT THE EC POSSESSES TERRITORIES, WHICH IT DOES NOT.

4. DUISBERG (FRG LEGAL ADVISER) RESPONDED THAT THE GERMAN DIFFICULTY WITH THE UK PROPOSAL (FORMULATION (B) ABOVE) WAS THAT IT WAS NOT A TERRITORIAL CLAUSE BUT A DEFINITION OF THE PARTIES. IT WAS THEREFORE VULNERABLE TO THE ARGUMENT THAT IT WAS SUPERFLUOUS -- ESPECIALLY IF IT CAME AS ARTICLE 10 OF THE TREATY. DUISBERG CONCEDED, HOWEVER, THAT THE FRENCH POINT WAS VALID AND NOTED THAT THE FRG PROPOSAL WAS ONLY MEANT TO CONVERT THE BRITISH PROPOSAL INTO A TERRITORIAL CLAUSE. HE SUGGESTED THAT THE FRG TEXT BE REFORMULATED TO USE THE FRENCH WORDING, THUS COMING UP WITH FORMULATION (G) ABOVE.

5. THE US REP REQUESTED A REVIEW OF THE CURRENT NEGOTIATING SITUATION, ASKING FOR CLARITY ON THE REASON FOR ATTEMPTING TO PRODUCE ALTERNATE FORMULATIONS WHEN THE SOVIETS HAVE NOT YET ACCEPTED THE GENERAL PRINCIPLE THAT A TERRITORIAL CLAUSE OF ANY KIND IS ACCEPTABLE. HE WONDERED WHETHER, IF THE SOVIETS COULD BE BROUGHT

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TO CONCEDE THAT POINT, IT WOULD NOT BE EASY TO AGREE ON THE WORDING OF THE TERRITORIAL CLAUSE.

6. DUISBERG AGREED FULLY WITH THAT POINT. HE RECAPITULATED THE SITUATION BY STATING THAT THE EC DRAFT (FORMULA (A) ABOVE) HAD BEEN SUBMITTED AND THAT THE SOVIETS HAD REPEATEDLY STATED THAT IT WAS UNACCEPTABLE. DESPITE HINTS BY SOVIET DIPLOMATS NOT INVOLVED IN THE NEGOTIATIONS THAT FORMULA (D) ABOVE MIGHT BE ACCEPTABLE, THE SOVIETS HAD MADE NO FORMAL

PROPOSAL.

7. DUISBERG CONTINUED THAT THE TWO "POLITICAL ISSUES"

WHICH REMAIN OPEN IN THE NEGOTIATIONS ARE THE TERRITORIAL CLAUSE AND THE DESCRIPTION OF THE PARTIES IN THE PREAMBLE (I.E., WHETHER THE AGREEMENT WILL BE SIGNED WITH THE EC OR WITH THE INDIVIDUAL MEMBER COUNTRIES). THE SOVIETS HAVE SENT ONLY "TECHNICAL EXPERTS" FOR THE MOST RECENT ROUND OF TALKS. AS VAN WELL POINTED OUT YESTERDAY TO THE ALLIED AMBASSADORS (REF A), THE FRG CONSIDERED IT ESSENTIAL TO BRING THE DISCUSSIONS AROUND TO THE POLITICAL ISSUES. MINISTER OF FISHERIES ISHKOV HAS JUST SENT WORD THAT HE CANNOT PARTICIPATE IN THE JUNE 29 NEGOTIATIONS BECAUSE OF ILLNESS, BUT IN THE FRG VIEW THE SOVIETS MUST SEND SOMEONE ELSE WHO CAN DISCUSS THE POLITICAL ISSUES. MEANWHILE, DUISBERG CONTINUED, THERE WAS NO REASON AT ALL FOR THE EC TO SUBMIT ALTERNATIVE WORDS FOR THE PRESENT DRAFT OF ARTICLE 10, AND THE NEW FRG PROPOSAL WAS TABLED SIMPLY TO RESPOND TO UK URGINGS FOR A CONTINGENCY FALLBACK FORMULATION.

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8. THE UK LEGAL ADVISOR (CHAMBERLAIN) AGREED THAT IT

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WOULD BE FOOLISH TO TABLE ALTERNATIVES UNTIL THERE HAVE BEEN SUBSTANTIVE NEGOTIATIONS ON THE TERRITORIAL CLAUSE. THE QUESTION WAS WHETHER THE EC SHOULD WAIT UNTIL THE SOVIETS PUT IN A COUNTER DRAFT OR SHOULD AT A CERTAIN POINT IN THE NEGOTIATIONS PUT IN ITS OWN REVISED DRAFT. IF, FOR EXAMPLE, THE SOVIETS WERE TO ARGUE THAT THE PRESENT ARTICLE 10 WAS UNACCEPTABLE BECAUSE IT IMPLIED THAT THE WATERS OVER WHICH THE EC CLAIMED FISHING RIGHTS WERE ALSO TERRITORIAL WATERS (AN OBJECTION THE NORWEGIANS ALSO HAVE RAISED TO THE DRAFT ARTICLE 10), IT MIGHT BE ADVANTAGEOUS IMMEDIATELY TO TABLE A NEW VERSION WHICH WOULD MEET THAT POINT.

9. TO SUMMARIZE THE ENSUING DISCUSSION, THE STATUS
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OF THE VARIOUS FORMULATIONS LISTED IN PARAGRAPH ONE
ABOVE IS AS FOLLOWS:

-- FORMULATION A. THIS IS STILL ON THE TABLE AS THE OFFICIAL EC POSITION. THE SOVIETS HAVE REJECTED IT BUT HAVE NOT MADE A FORMAL COUNTER PROPOSAL.

-- FORMULATION B. THIS IS UNACCEPTABLE TO THE FRENCH, BECAUSE THE EEC DOES NOT POSSESS TERRITORIES, AND TO THE FRG, BECAUSE IT IS NOT A TRUE TERRITORIAL CLAUSE. (WE AGREE THAT BOTH OBJECTIONS ARE VALID.)

-- FORMULATION C. THE UK HAS NOT EXPRESSED AN OPINION ON THIS VARIANT. THE FRG DISLIKES IT BECAUSE IT IS NOT A TRUE TERRITORIAL CLAUSE.

-- FORMULATION D. THE FRG DOES NOT THINK THIS IS A SERIOUS SOVIET PROPOSAL, WHEREAS THE BRITISH ARE CONVINCED THAT IT SHOULD BE TREATED SERIOUSLY. THE US REP SUGGESTED THAT ALL FOUR SHOULD TAKE A POSITION AS TO WHETHER IT WOULD BE ACCEPTABLE IF THE SOVIETS WERE INDEED TO PROPOSE IT FORMALLY. BOTH THE US REP AND THE FRG REP THOUGHT THAT IT WOULD BE ADEQUATE TO ASSURE THE INCLUSION OF BERLIN AND THEREFORE SHOULD BE ACCEPTABLE. THE FRENCH AND UK REPS AGREED TO QUERY CAPITALS AS TO ITS ACCEPTABILITY. THE UK REP POINTED OUT THAT LONDON WOULD HAVE DIFFICULTY WITH DELETION OF THE "UNDER THE CONDITIONS" PHRASE BECAUSE SOME OF THOSE CONDITIONS APPLIED TO SUCH BRITISH TERRITORIES AS THE CHANNEL ISLANDS. LONDON HAD NEVERTHELESS SAID THAT, IF ACCEPTABLE TO THE OTHER THREE, IT WOULD SEEK SOME OTHER FORMULATION FOR MEETING THE CHANNEL ISLANDS PROBLEM.

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-- FORMULATION E. HENZE SAID HE HAD STRICT INSTRUCTIONS TO REJECT THIS FORMULATION. US REP AGREED THAT THERE WERE SEVERAL REASONS FOR NOT INTRODUCING AN ALLUSION TO THE QA.

-- FORMULATION F. GAUSSOT WAS CATEGORICAL THAT THIS WOULD BE UNACCEPTABLE TO THE FRENCH.

-- FORMULATION G. GAUSSOT THOUGHT THIS WOULD PROBABLY BE ACCEPTABLE TO PARIS, AND CHAMBERLAIN SAID IT MIGHT BE ACCEPTABLE TO LONDON. HENZE AGREED TO STUDY IT FURTHER, ADDING THAT HIS INITIAL REACTION WAS NOT NEGATIVE. US REP ALSO AGREED TO STUDY IT FURTHER BUT SERIOUSLY DOUBTED THAT THE ALLIES WOULD BE ABLE TO DEFEND SUCH A CLAUSE IN THE FUTURE AS BEING CLEARLY INTENDED TO INCLUDE BERLIN. HE THOUGHT THE SUBORDINATE CLAUSE CONCERNING THE COMPETENCES OF THE EEC DID NOT REALLY MAKE THE POINT THAT THE PRESENT AGREEMENT WOULD EXTEND TO BERLIN. ALL REPS AGREED TO SEEK VIEWS FROM CAPITALS ON THIS PARTICULAR FORMULATION.

10. COMMENT: GIVEN THE OBJECTIONS TO THE VARIOUS PROPOSALS, THE ONLY FORMULATIONS WHICH CAN BE CONSIDERED STILL TO BE UNDER ACTIVE CONSIDERATION ARE (A), (C), (D), AND (G). FORMULATION (D) MAY NEVER BE FORMALLY PROPOSED, BUT WOULD, IN OUR VIEW, BE ACCEPTABLE. AS NOTED ABOVE, WE PERCEIVE REAL DIFFICULTIES IN ACCEPTING (G) AS A CLAUSE WHICH COULD BE DEFENDED AS CLEARLY APPLYING TO BERLIN. IF THE

NEGOTIATIONS DO, HOWEVER, PICK UP MOMENTUM, WE MAY BE
CALLED UPON IN THE NEAR FUTURE TO TAKE A STAND.

11. ACTION REQUESTED: THE VIEWS OF USBER AND THE
DEPARTMENT ON THE ABOVE FORMULATIONS, PARTICULARLY
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(C), (D) AND (G).
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